IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.784 OF 2005

Rashid Miya Sayyed M. Kadri — Appellant

Vs.

Municipal Corporation of Gr.Bombay — Respondent

Mr.Anil Singh with Mr.D.R. Shah for appellant.
Mrs.Geeta Jogalekar for respondent.

CORAM: B.H.MARLAPALLE,J.
August 08, 2005.

ORAL ORDER:

1. The Municipal Corporation issued the notice dated 18-5-2005 under Section 351 of the MMC Act and pointed out that the structure admeasuring 8 ft. x 9 ft. in the open space inside the compound wall was illegal. An advocate's reply was sent to the said notice and the Assistant Commissioner, H-West Ward of the Corporation passed an order on 12-7-2005 considering the said reply. No documents were submitted to prove the authorisation of the said structure and, therefore, by the order dated 12-7-2005 the Asst. Commissioner called upon the appellant-plaintiff to remove the said structure failing which it would be removed at the risk and cost of the noticee. This order came to be challenged in L.C. Suit No.2878 of 2005. Notice of

Motion No.2722 of 2005 has also been taken out for interim relief by way of temporary injunction. The learned Judge of the City Civil Court heard the parties and by his impugned order dated 25/7/2005 declined to grant ad-interim relief. The notice of motion has been fixed for hearing on interim relief today.

2. By the plaintiff's own contentions the business under the name and style of Jolly Dryfruit Centre was being run in the suit premises from 1978 and no papers were submitted to show that it was an authorised structure when the order was passed by the Asst. Commissioner. The learned counsel for the plaintiff now places before this Court a copy of the City Survey Map in support of his contention that the suit structure was existing as an authorised structure. Placing a copy of this document in the appeal could not advance the plaintiff's case for granting ad-interim stay at this stage when the notice of motion is itself made returnable. The plaintiff may place all these documents on record before the trial Court but in the mean while there is no reason to interfere with the order passed by the trial Court declining to grant ad-interim relief.

3. The appeal is, therefore, dismissed in limine. The trial Court to decide the notice of motion expeditiously.

(B.H.MARLAPALLE,J.)